

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
SPACE EXPLORATION TECHNOLOGIES :
CORP., :
: :
: Plaintiff, :
: :
v. : No.: 1:12-cv-07510-PAE (KNF)
: :
D.T. GRUELLE COMPANY GROUP, :
L.L.C., :
: :
: Defendant. :
-----x

MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15(a)(2), Plaintiff Space Exploration Technologies Corp. (“SpaceX”) requests leave to file an Amended Complaint, attached as Exhibit 1 to the Declaration of Douglas P. Lobel in Support of Motion for Leave to File Amended Complaint. SpaceX’s amendments only clarify its existing causes of action and the damages it seeks; SpaceX does not seek to add new counts or join new parties.

ARGUMENT

Under Federal Rule of Civil Procedure 15, a party may amend its pleading either with the opposing party’s written consent or with the Court’s leave. Fed. R. Civ. P. 15(a)(2). Under the Rule, “[t]he court should freely give leave when justice so requires.” *Id.* The Court must have good reason to deny a motion to amend. *See Acito v. Imcera Grp. Inc.*, 47 F.3d 47, 55 (2d Cir. 1995) (citing *S.S. Silberblatt, Inc. v. East Harlem Pilot Block Bldg. I Hous. Dev. Fund Co.*, 608 F.2d 28, 42 (2d Cir. 1979)). Such reasons are undue delay, bad faith or dilatory motive, undue

prejudice to the non-movant, or futility of amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962). None of these reasons are applicable.

SpaceX has not unduly delayed in seeking to amend. First, SpaceX seeks leave to amend within the deadline set by the Court. *See* Dkt. No. 18. Second, SpaceX has good cause to amend. Based on counsel's continuing factual investigation, SpaceX desires that the allegations reflect the facts that the evidence is likely to show at trial. Third, SpaceX and Defendant, D.T. Gruelle Co. Group, LLC ("DTG"), have been attempting to settle this action, as explained to the Court in its Joint Letter (submitted on January 14, 2013) and at the Initial Pretrial Conference. SpaceX necessarily postponed seeking leave to amend while the parties' discussed settlement. Thus, any claimed delay is not significant or undue. *See Grant v. Citibank (South Dakota), N.A.*, No. 10 Civ. 2955, 2010 WL 5187754, at *8 (S.D.N.Y. Dec. 6, 2010) (delay not undue where parties were engaged in settlement discussions).

Further, DTG will not be prejudiced. SpaceX has already explained its damages theory to DTG, which it merely seeks to clarify in the Amended Complaint. The new allegations will, therefore, come as no surprise to DTG. DTG has ample time to explore SpaceX's allegations, as discovery does not close until May 17, 2013.

Finally, the proposed amendment is not futile. DTG did not move to dismiss the original complaint; the new allegations merely lend clarity to the damages sought in the original complaint.

CONCLUSION

For the aforementioned reasons, SpaceX respectfully requests that the Court grant SpaceX leave to amend its Complaint.

Dated: February 19, 2013

Respectfully submitted,

COOLEY LLP

By: /s/ Douglas P. Lobel

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February 2013, Wells Fargo's **MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE AMENDED COMPLAINT** was filed through the ECF system and will be sent electronically, via the ECF system, to the following registered participants, as also identified on the Notice of Electronic Filing (NEF). There are no non-registered participants in this case to my knowledge and belief.

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/s/ Douglas P. Lobel
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